UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

CASE NO. 4:06-CR-106

Plaintiff,

:

v. : OPINION & ORDER

[Resolving <u>Doc. 84</u> & <u>Doc. 87.</u>]

ERIC BALLARD,

.

Defendant.

.

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Following the Court's denial of his 28 U.S.C. § 2255 motion to vacate, Defendant Eric Ballard moves for a certificate of appealability. [Doc. 87.] However, Ballard has not "made a substantial showing of the denial of a federal constitutional right." Savoca v. United States, 567 F.3d 802, 803 (6th Cir. 2009). As the Court's opinion denying his § 2255 motion explained, Ballard waived his ineffective assistance arguments by failing to timely object to the magistrate judge's report and recommendation, and in any event, those arguments were meritless. [Doc. 83.] Moreover, § 2255(f)'s one-year limitations period barred Ballard's motion to amend his § 2255 petition to add new grounds. [Doc. 83.] Thus, because Ballard has not "demonstrat[ed] that reasonable judges could disagree with the district court's resolution of his constitutional claims nor could conclude the issues presented are adequate to deserve encouragement to proceed further," the Court DENIES Ballard's motion for a certificate of appealability. Savoca, 567 F.3d at 803 (citing Miller-El v. Cockrell, 537 U.S. 322, 327 (2003)).

Ballard also moves for leave to file an affidavit in support of his § 2255 motion, claiming that

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his lawyer failed to adequately explain federal sentencing law or to obtain a plea deal for him. [Doc.

84.] As a threshold matter, as explained above, Ballard waived this ineffective assistance argument

by failing to timely object to the magistrate judge's R&R. [Doc. 83.] Additionally, because

Ballard's affidavit does not purport to show that his sentence would have been different under any

plea agreement his lawyer might have obtained, the affidavit fails to make his ineffective assistance

argument viable on the merits. [Doc. 84-1.] Thus, the Court **DENIES AS MOOT** Ballard's motion

for leave to file an affidavit in support of his § 2255 motion.

IT IS SO ORDERED.

Dated: July 27, 2010 s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE